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No. 92-____

In The
Supreme Court of the United States
October Term, 1992

GERALD D. BAIR, DIRECTOR,
IOWA DEPARTMENT OF REVENUE AND FINANCE,
Petitioner,

vs.

BURLINGTON NORTHERN RAILROAD COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTION PRESENTED

Whether the Eighth Circuit's rule that a district court must enter a preliminary injunction whenever it finds "reasonable cause" to believe that a violation of Section 306 of the Railroad Revitalization and Regulatory Reform Act, Pub. L. No. 94-210, 90 Stat. 31, 54-55 (Feb. 5, 1976), has occurred or is about to occur, conflicts with *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982) and *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531 (1987).

PARTIES TO THE PROCEEDINGS BELOW

All parties to the proceedings below are identified in the caption.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit which gives rise to this petition is reported as *Burlington N. R.R. Co. v. Bair*, 957 F.2d 599 (8th Cir. 1992) and is appended at Exhibit I. The unreported opinion of March 26, 1991, of the United States District Court for the Southern District of Iowa, is appended at Exhibit II.

JURISDICTION

The Court has jurisdiction to issue a writ of certiorari to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1254(1). This petition is timely pursuant to 28 U.S.C. § 2101(c).

STATUTES

Section 306 of the Railroad Revitalization and Regulatory Reform ("4-R") Act of 1976, Pub. L. No. 94-210, 90 Stat. 31, 54-55 (Feb. 5, 1976), codified with some language modifications at 49 U.S.C. § 11503, provides, in relevant part:

> (1) [A]ny action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:
>
> . . . .
>
> (2) Notwithstanding any provision of section 1341 of title 28, United States Code, [the Tax Injunction Act] or of the constitution or laws of any State, the dis-

> trict courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section . . .

The full text of Section 306 is appended at Exhibit III. The codification of the statute at 49 U.S.C. § 11503 is appended at Exhibit IV.

STATEMENT OF THE CASE

On July 27, 1990, Burlington Northern Railroad Company, ("Burlington Northern") filed a complaint against Gerald D. Bair, Director of the Iowa Department of Revenue and Finance, ("Bair") in United States District Court for the Southern District of Iowa. Jurisdiction for the complaint was founded in Section 306 of the 4-R Act. Burlington Northern sought to prohibit Bair from collecting ad valorem taxes assessed for the 1989 year. Iowa ad valorem taxes are payable in two installments. Burlington Northern paid 75 per cent of the first installment and agreed with Bair to a consent injunction which placed the remaining 25 per cent of the first installment in escrow. Before the second installment came due, Burlington Northern moved the district court for a preliminary injunction prohibiting Bair from collecting or attempting to collect any portion of Burlington Northern's second

installment. Bair resisted the motion. The trial court heard Burlington Northern's motion on March 8, 1991.

Both parties supplemented their argument on the motion with briefs and affidavits. Burlington Northern made no attempt to qualify for a preliminary injunction under traditional equitable standards,[1] but argued that it was still entitled to an injunction on showing reasonable cause to believe Section 306 had been or was about to be violated. Under the reasonable cause standard, the district court does not balance the equities between the parties, but, instead, simply determines whether reasonable cause exists to believe that a violation of the act has occurred. Bair contended that the district court should

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[1] The Eighth Circuit's four customary criteria for determining the propriety of issuing a preliminary injunction are set out in *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981): "(1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." Burlington Northern could not meet these criteria, in part, because it had already established that it had an adequate remedy at law (i.e., there would be no irreparable harm) in *Burlington N. R.R. Co. v. Bd. of Sups. of Adair County*, 418 N.W.2d 72 (Iowa 1988) (holding that Iowa state courts would enforce refunds of any taxes the federal courts determined were paid in violation of Section 306.)

apply traditional equitable principles to determine whether an injunction should issue under Section 306. The trial court held that the injunction should issue based on the "reasonable cause" standard and also held that only Burlington Northern's evidence, and not Bair's, was germane to the determination. After reviewing Burlington Northern's evidence, the court found sufficient facts to show reasonable cause, although those facts were disputed, and issued the injunction. As a result, local governments in Iowa were deprived of approximately one million dollars in budgeted and assessed taxes.

Bair took an interlocutory appeal to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit affirmed that under Section 306 the test for determining if a preliminary injunctions should issue on reasonable cause was whether there is reasonable cause to believe that Section 306 had been or was about to be violated. The Eighth Circuit reversed the trial court regarding the application of the standard and remanded for consideration of Bair's evidence. Bair now petitions the Court to review whether mandatory injunctive relief based on the "reasonable cause" standard is an unwarranted surrender of traditional equitable discretion.

REASONS FOR GRANTING THE WRIT

The Court should issue the writ to preserve traditional judicial discretion over equitable cases.

The Eighth Circuit's holding that "where Congress expressly provides for injunctive relief to prevent violations of a statute, a plaintiff does not need to demonstrate irreparable harm to secure an injunction" should be corrected. This holding reveals a misconception of the relation between Congress and the Judiciary. The correct rule is: "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *quoted with approval in Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982); *accord, Amoco Production Co. v. Village of Gambell*, 480 U.S. 531 (1987).

The Eighth Circuit decision failed to respect the plain language of Section 306 of the 4-R Act, which grants equitable discretion over the whole range of interim equitable relief. Section 306 provides: "the district courts of the United States shall have jurisdiction . . . to grant . . . interim equitable relief . . . as may be necessary . . ." As discussed in greater detail in the Argument below, the statutory reference to interim relief in permissive terms is an accurate reflection of Congressional intent. Thus, neither the plain language nor the necessary and inescapable inferences of Section 306 restrict traditional equitable jurisdiction. In fact, the plain language of Section 306 and the Congressional history show that Congress intended traditional principles of equity to govern both preliminary and permanent injunctions.

Furthermore, the implications of the Eighth Circuit's abandonment of judicial discretion in equity extend beyond cases arising under Section 306 of the 4-R Act. In a number of instances, Circuit Courts of Appeal have created non-traditional standards for injunctive relief.[2] The Eighth Circuit's decision in this case adds to the confusion regarding the standard to apply under any federal statute that authorizes interim equitable relief.

ARGUMENT

I. The Eighth Circuit's Decision Is Appropriate For Review As A Final Statement Of The Standard Governing Preliminary Injunctions.

The decision of the Eighth Circuit remands the case to the district court to consider all the evidence available to it before determining whether there is reasonable cause to believe that a violation of Section 306 has occurred or is about to occur. However, as to whether the standard

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[2] *See, e.g.,* the development of the "reasonable cause" and other standards in cases arising under Section 10(j) of the Labor Management Relations Act, 29 U.S.C. § 141 et seq., such as: *Boire v. International Brotherhood of Teamsters*, 479 F.2d 778 (5th Cir. 1973); *Szabo v. P*I*E Nationwide, Inc.*, 878 F.2d 207 (7th Cir. 1989); *Squillacote v. Meat and Allied Food Workers*, 534 F.2d 735 (7th Cir. 1976); and, *Aguayo ex rel. NLRB v. Tomco Carburetor Company*, 853 F.2d 744 (9th Cir. 1988).

for issuing a preliminary injunction is traditional equitable balancing or "reasonable cause," the decision is final. *See, City of New Orleans v. Dukes*, 427 U.S. 297 (1976). It is the Eighth Circuit's adoption of the "reasonable cause" standard that Bair seeks to have reviewed.

II. The Eighth Circuit's Holding That Reasonable Cause To Believe That A Violation Of Section 306 Of The 4-R Act Has Occurred Requires Injunctive Relief Conflicts With *Weinberger v. Romero-Barcelo* And *Amoco Production Co. v. Village of Gambell*.

The Eighth Circuit avoided following *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982) ("*Weinberger*") by restricting its reading of *Weinberger* to the Federal Water Pollution Control Act. The Ninth Circuit made the same mistake in *Village of Gambell v. Hodel*, 774 F.2d 1414 (9th Cir. 1985). The Court reversed the Ninth Circuit in *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531 (1987), establishing that *Weinberger* cannot be so narrowly restricted.

The Court's decision in *Weinberger* governs all requests for injunctive relief in federal courts, not merely those which arise under the Federal Water Pollution Control Act:

> An injunction should issue only where the intervention of a court of equity "is essential in order effectually to protect property rights against injuries otherwise irremediable." . . . . The Court has repeated-

> ly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies . . . .
>
> The grant of jurisdiction to insure compliance with a statute hardly suggests an absolute duty to do so under any and all circumstances, and a federal judge sitting as a chancellor is not mechanically obligated to grant an injunction for every violation of law . . . .

456 U.S. at 312, 313 (citations omitted). Review by the Court is essential to require the Eighth Circuit to comply with the *Weinberger* decision.

III. The Eighth Circuit Erred When It Read The Statutory Authorization For "Interim Equitable Relief . . . As May Be Necessary" As A Directive to Abandon Traditional Judicial Discretion Over Preliminary Injunctions.

The Eighth Circuit correctly observed that one purpose of the 4-R Act was to cure discriminatory state and local taxation of railroads. From the purpose of the Act the Eighth Circuit inferred that Burlington Northern was entitled to a preliminary injunction by establishing reasonable cause to believe the Act had been or was about to be violated. This standard relieved Burlington Northern from proving that the payment of the disputed taxes pending resolution on the merits would cause irreparable injury and precluded the trial court from

balancing the injury to the state and local governments which would be caused by enjoining the taxes. The Eighth Circuit did not appreciate that all of Burlington Northern's interests under the 4-R Act would be vindicated by permanent injunction of any taxes Burlington Northern proved to be assessed in violation of the Act. The preliminary injunction added nothing to the surety of Burlington Northern's ultimate remedy and unnecessarily injured local governments in Iowa.

In reaching its conclusion, the Eighth Circuit ignored the unambiguous language of Section 306 which grants the injunctive powers. Two portions of the operative clause show that Congress intended the Judiciary to exercise standard equitable principles when considering interim relief. Section 306 establishes "jurisdiction . . . to grant . . . interim equitable relief . . . as may be necessary to prevent, restrain, or terminate any acts in violation of this section . . . ." First, Section 306 refers to interim equitable relief in the broadest possible terms and does not confine the relief to preliminary injunctions. Second, the relief clause is subject to the qualification "as may be necessary," -- a Congressional reference to standard equitable balancing of interests. In contrast, there is no reference whatever to "reasonable cause" in Section 306. Even though the express language establishes that preliminary injunctions are permissive, additional confirmation is found in the legislative history which shows the statutory language accurately reveals Congress' intent.

During hearings before Congress on predecessor legislation with language similar to Section 306, Paul H.

Sanders, a professor of law at Vanderbilt University testified, with respect to the proposed injunctive relief, that "unquestionably such a remedy should be fashioned in the light of well-known principles of equity." "Tax Assessments On Common Carrier Property," Hearings on H.R. 4927 Before the House Committee on Interstate and Foreign Commerce, 89th Cong., 2d Sess. (Ser. No. 89-30) 53 (1966). In favorably reporting an essentially identical bill to the full Senate about which Professor Sanders had repeated his comments, the Congressional committee hearing the bill specifically noted its agreement "with . . . the legal opinion of Professors Sanders and Hartman [Sanders' co-author]." S. Rep. 630, 91st Cong., 1st Sess. 13 ("Discriminatory State Taxation Of Interstate Carriers," Report from the Senate Committee on Commerce to Accompany S. 2289) (1969).

Congress later stated its agreement with Professor Sander's assessment in reporting on another interchangeable precursor to Section 306:

> Enactment of this section will not necessarily mean that the Federal courts will enjoin all state taxation of rail property which are the subject of complaint. The railroads will have to sustain the burden of demonstrating that discrimination exists. They will also have to make the additional showing that they are entitled to injunctive relief. With respect to the latter issue, the courts in the exercise of equity jurisdiction will balance the adverse impact on the

> community of granting such relief against the benefits to the carrier from such relief. The Federal courts will be able to devise remedies that will not be burdensome to the communities involved.

H.R. Rep. 725, 94th Cong., 1st Sess. 77-78 (Report of the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Together with Supplemental and Dissenting Views on H.R. 10979) (1975).

The Eighth Circuit reached its conclusion based on its reading of *United States v. City and County of San Francisco*, 310 U.S. 16 (1940), ("*San Francisco*") as interpreted by *Atchison, T. & S.F. Ry. v. Lennen*, 640 F.2d 255 (10th Cir. 1981) ("*Lennen*"). The Eighth Circuit cited *San Francisco* for the proposition that "where Congress expressly provides for injunctive relief to prevent violations of a statute, a plaintiff does not need to demonstrate irreparable harm to secure an injunction." However, *San Francisco* is not authority for the rule. In *San Francisco* a federal district court enjoined the City of San Francisco from continuing to violate the express statutory provisions of a specific land grant to the City of San Francisco under legislation known as the "Raker Act," 38 Stat. 242 (1913).

First, the statutory language being enforced in *San Francisco* did <u>not</u> expressly authorize federal courts to grant injunctive relief in furtherance of the express

purposes of the statute in question,[3] as implied by the Eighth Circuit. Second, there was no question in *San Francisco* that the applicable statute was being violated; the city of San Francisco admitted the violation. Rather, the issue before the Court was whether such violation could be remedied by injunction as opposed to some other form of relief:

> Here, as in the courts below, the City has defended . . . upon the grounds that . . . if Section 6 is valid and has been violated, the

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[3] The statutory language on which the injunctive relief in *San Francisco* was based, Section 9(u), provided that:

> " . . . in the event that the same [conditions specified in the Act] are not reasonably complied with and carried out by the grantee [City], upon written request of the Secretary of the Interior, it is made the duty of the Attorney General in the name of the United States to commence all necessary suits or proceedings in the proper court having jurisdiction thereof, for the purpose of enforcing and carrying out the provisions of this Act." 38 Stat. 250.

San Francisco, 310 U.S. at 18, n. 3. Thus, the Raker Act provided very little mandate with respect to relief.

> United States is not entitled to injunctive relief in equity.

San Francisco, 310 U.S. at 19 (emphasis added). This Court concluded that it was within the power of the district court below to grant an injunction:

> The equitable doctrines relied on do not militate against the capacity of a court of equity as a proper forum in which to make a declared policy of Congress effective. Injunction to prohibit continued use -- in violation of that policy -- of property granted by the United States, and to enforce the grantee's covenants, is both appropriate and necessary.

San Francisco, 310 U.S. at 31. Third, the injunctive relief sought was not a preliminary injunction but a permanent injunction based on a decision on the merits and a full evidentiary record created by both parties. Fourth, in granting the injunction, the trial court in *San Francisco* (whose decision was ultimately affirmed by this Court) essentially applied traditional equitable principles in determining whether the injunction should issue. Specifically, the trial court found that an injunction was appropriate only if money damages would not afford adequate relief. The trial court concluded that an injunction was appropriate because "[t]he injury to the Government caused by the City's violation of the Raker Act cannot be measured in terms of money damages." *United States v. City and County of San Francisco*, 23 F.Supp. 40, 53 (N.D.

Cal. 1938). However, the trial court postponed the effective date of the injunction for six months, finding that immediate implementation of the injunction "would result in serious economic waste" to the city. 23 F.Supp. at 53. Finally, even if *San Francisco* and *Lennen* once stood for the proposition attributed to them by the Eighth Circuit, the continued vitality of such a rule after *Weinberger* and *Amoco* is subject to considerable question. The Eighth Circuit did not reconcile its citation to *San Francisco* with *Weinberger* or *Amoco*.

Thus, *San Francisco* provides no authority for the Eighth Circuit's conclusion that traditional equitable principles can be abandoned simply because a statutory provision allows injunctive relief. In *San Francisco*, there was no statutory provision granting injunctive relief; the statute was admittedly being violated; the injunctive relief was issued on the merits after a full review of the facts; and the district court weighed traditional equitable principles in shaping the injunctive relief.

The adoption of the "reasonable cause" standard in determining whether preliminary injunctive relief shall issue under Section 306 of the 4-R Act is an abdication by the courts of the full scope of the courts' jurisdiction in equity. The Court should review this abdication because the "reasonable cause" standard is not supported by the language of Section 306, its legislative history, or by the decisions of this Court.

CONCLUSION

The Court should issue the writ of certiorari to the United States Court of Appeals for the Eighth Circuit and entertain full briefing and argument.

Respectfully submitted.

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